

Fiscal Services Division

Legislative Services Agency

Fiscal Note

SF 2206 - Safety Audit Privilege & Immunity (LSB 5325 SV)
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Fiscal Note Version - New

Description

Senate File 2206 creates a new chapter in the Code of Iowa concerning occupational safety and health inspections and audits. The proposed legislation allows an employer, employee, or independent contractor to conduct a safety audit. The Bill specifies the safety audit is voluntary and that materials contained in the audit are privileged and confidential and not discoverable or admissible as evidence in any civil or administrative proceeding. Senate File 2206 specifies circumstances where materials are not to be considered privileged. If a court finds that a person claiming privilege intentionally claimed the privilege for material that is not entitled to be privileged, the person is guilty of a serious misdemeanor punishable by a fine of up to \$1,000.

Assumptions

1. Senate File 2206 would not reduce the number of safety audits performed by the State Occupational Safety and Health Program each year.
2. The Division of Labor Services in the Department of Workforce Development receives federal funds from the Occupational Safety and Health Administration for enforcement and education of occupational safety and health standards. The federal funds require a state match. These federal funds would not be available for use in implementation of the provisions of this Bill.
3. The Division of Labor Services would require additional staff to implement the provisions of the proposed legislation. A Training Specialist II would be hired at an annual salary of \$59,000, and a Secretary I would be hired at an annual salary of \$34,000. Support and travel costs for the two positions would be \$20,000 annually.
4. The estimate does not include the potential impact from the loss of federal funds resulting from the proposed legislation. The federal Occupational Safety and Health Administration (OSHA) provides federal funding to the Division of Labor Services provided that state enforcement efforts are seen at least as effective as federal enforcement efforts. According to the Division of Labor Services, the audits allowed in the Bill and the immunity granted to employers who meet certain requirements, may compromise enforcement efforts, which could in turn result in the loss of federal funding. If this occurs, Iowa will lose its State Occupational Safety and Health Program. However, if Iowa loses the State Program, a State appropriation would no longer be necessary for the Program, which would result in a General Fund savings. The General Fund savings would then be offset by a like amount from the loss of revenue deposited into the General Fund from penalties or fines collected from occupational safety and health violations issued. The State OSHA Program is funded by a General Fund allocation of \$1.6 million and a federal allocation of \$2.2 million.
5. The Bill allows the Division of Labor Services to charge a fee for the training provided. The Bill does not specify that the Division is allowed to retain the fee revenue. If the Division was allowed to retain the fee revenue, the fiscal impact would be reduced. The number of individuals who would seek training and pay the fee is unknown.
6. The proposed legislation requires the courts to perform an in camera review of audit reports and allows an appeal to the district courts under Section 88.34(3) Code of Iowa.

These provisions would result in additional court time per hearing as well as additional court hearings. The provision would require the following staff to spend additional time per hearing:

- District Court Judge (\$62/hr) 16 to 24 additional hours per hearing
- Court Reporter (\$33/hr) 4 additional hours per hearing
- Court Attendant (\$19/hr) 16 additional hours per hearing
- Clerk of Court (\$16/hr) 4 additional hours per hearing

The total cost for additional hours for staff to spend on each hearing is approximately \$1,500 - \$2,000. The number of hearings that would result from the proposed legislation is unknown.

7. The authorization of an interlocutory appeal would result in an increased workload for the Supreme Court. This would require the following staff to spend additional time per appeal:

- One Justice (\$74/hr) 80 additional hours per appeal
- One Law Clerk (\$26/hr) 80 additional hours per appeal
- Six additional Justices (\$74/hr) 12 additional hours per appeal
- Six additional Law Clerks (\$26/hr) 12 additional hours per appeal

The total cost of this provision is approximately \$15,000 per appeal. The number of appeals that would result from the proposed legislation is unknown.

8. If a court finds that a person claiming privilege intentionally claimed the privilege for material that is not entitled to be privileged, the person is guilty of a serious misdemeanor punishable by a fine of up to \$1,000. The cost per case to the courts for the criminal violations would range from \$100 per case for a bench trial, to \$500 per case for a jury trial. The number of cases that would result in criminal violations from this provision is unknown.

Correctional Impact

There is no significant correctional impact anticipated as a result of SF 2206 since the serious misdemeanor specified in the Bill is only punishable by a monetary fine.

Fiscal Impact

Senate File 2206 would result in a General Fund cost to the Division of Labor Services within the Department of Workforce Development of \$113,000 and 2.0 FTE positions annually starting in FY 2005. The cost to the General Fund would be reduced by fee revenue collected from the training provided if the Bill were to specify that the Division of Labor Services was to retain the fee revenue generated. The anticipated fee revenue that would be generated is unknown.

The courts would incur additional costs from various provisions of the proposed legislation. The total cost to the courts detailed above would depend on the number of cases/hearings, and appeals that would result from the provisions of this Bill. The number of cases/hearings and appeals that would result is unknown.

Sources

Department of Workforce Development, Division of Labor Services

Judicial Branch

Department of Human Rights, Criminal and Juvenile Justice Planning Division

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The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.
